

STATE OF SOUTH CAROLINA

(Caption of Case)

Petition for Approval of NPCR, Inc. d/b/a Nextel
Partners' Adoption of the Interconnection Agreement
Between Sprint Communications Company L.P.,
Sprint Spectrum L.P. d/b/a Sprint PCS And
BellSouth Telecommunications, Inc. d/b/a AT&T
South Carolina d/b/a AT&T Southeast

BEFORE THE
PUBLIC SERVICE COMMISSION

COVER SHEET

DOCKET

NUMBER: 2007 - 256 - C

(Please type or print)

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DOCKETING INFORMATION (Check all that apply)

- ☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously
- ☐ Other: NPCR Inc.'s Response to AT&T South Carolina's Motion to Dismiss

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request	
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certificatio	
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigator	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input checked="" type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery	
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input checked="" type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena	
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest		
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit		
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report		

**Before the
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**

In the matter of)	
)	
Petition for Approval of NPCR, Inc. d/b/a)	
Nextel Partners' Adoption of the)	
Interconnection Agreement Between)	
Sprint Communications Company L.P.,)	Docket No. 2007-256-C
Sprint Spectrum L.P. d/b/a Sprint PCS)	
And BellSouth Telecommunications, Inc.)	
d/b/a AT&T South Carolina d/b/a AT&T)	
Southeast		

**NPCR Inc.'s Response to AT&T South Carolina's
Motion to Dismiss**

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") hereby files its Response to BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina's ("AT&T" or "AT&T South Carolina") Motion to Dismiss filed on August 10, 2007 ("Motion"). For the reasons set forth below, Nextel Partners respectfully requests that the Public Service Commission of South Carolina ("Commission") deny AT&T's Motion and acknowledge that effective June 28, 2007, Nextel Partners has adopted the existing "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum Limited Partnership"¹ dated January 1, 2001 ("Sprint ICA").

I. Introduction

On December 29, 2006, AT&T, Inc. and BellSouth Corporation voluntarily proposed "Merger Commitments" that became "Conditions" of approval of the AT&T/BellSouth merger when the Federal Communications Commission ("FCC") authorized the merger. The FCC ordered that as a Condition of its grant of authority to complete the merger, the merged entity

¹ Sprint Communications Company L.P., and Sprint Spectrum L. P. are collectively referred to as "Sprint".

and its ILEC affiliates (which include AT&T South Carolina), are required to comply with their Merger Commitments.²

The interconnection-related Merger Commitment No. 1 granted Nextel Partners a right, unqualified as to time, to adopt **“any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory.”**³ In addition to AT&T Merger Commitment No. 1, because the Sprint ICA is an interconnection agreement previously approved by this Commission, AT&T is also required by Section 252(i) of the Telecommunications Act of 1996 (“Act”) to make the Sprint ICA available to Nextel Partners for adoption.⁴

On June 28, 2007, Nextel Partners filed with the Commission its Petition for Approval of NPCR, Inc. d/b/a Nextel Partners’ Adoption of the BellSouth-Sprint Interconnection Agreement (“Nextel Partners Petition”), for the purpose of obtaining the Commission’s acknowledgment of Nextel Partners’ adoption of the existing Sprint ICA. Nextel Partners’ Petition informed the Commission that:

² *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, Ordering Clause ¶ 227 at page 112, WC Docket No. 06-74 (Adopted: December 29, 2006, Released: March 26, 2007) (“*FCC BellSouth Merger Order*”) (“IT IS FURTHER ORDERED that as a condition of this grant AT&T and BellSouth shall comply with the conditions set forth in Appendix F of this Order.”). A copy of the Table of Contents and Appendix F to the *FCC BellSouth Merger Order* is attached hereto as **Exhibit “A.”**

³ See *FCC BellSouth Merger Order*, at page 149, Appendix F, Merger Commitment No. 1 under “Reducing Transaction Costs Associated with Interconnection Agreements” which states:

The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.

(Emphasis added).

⁴ 47 USC § 252(i) provides:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

1) Nextel Partners had exercised its rights, effective immediately, to adopt in its entirety the same Sprint ICA, as amended, that has been filed and approved in each of the 9 legacy-BellSouth states, including South Carolina⁵;

2) Nextel Partners exercised such adoption rights pursuant to *both* the FCC-approved Merger Commitment Nos. 1 and 2 under “Reducing Transaction Costs Associated with Interconnection Agreements” as ordered in the *FCC BellSouth Merger Order*, **and** 47 U.S.C. § 252(i);⁶

3) All relevant state-specific differences among the 9 legacy-BellSouth states are already contained within the Sprint ICA, including South Carolina. Since the same state-specific terms are applicable to Nextel Partners on a state-by-state basis, there are no “state-specific pricing and performance plans and technical feasibility” issues pursuant to Merger Commitment No. 1. Likewise, since the Sprint ICA is already Triennial Review Remand Order (“TRRO”)-compliant and has an otherwise effective change of law provision, there is no issue preventing Nextel Partners from adopting the Sprint ICA in each applicable state, including South Carolina, pursuant to Merger Commitment No. 2;⁷

4) The Sprint ICA is effective and has not expired, although Sprint and AT&T have a dispute regarding the term of the agreement. Sprint believes the term of the agreement ends

⁵ Nextel Partners Petition, at pages 2, 4-5. For the purposes of this Response, the 9 legacy-BellSouth states means: Alabama, Florida, Georgia, Kentucky, Louisiana, Georgia, North Carolina, South Carolina and Tennessee.

⁶ *Id.*, at pages 1, 3-4; *FCC BellSouth Merger Order*, at page 149, Appendix F, Merger Commitment No. 2 states:

The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.

⁷ Nextel Partners Petition, at page 6.

March 19, 2010 while AT&T has taken a position, among other things, that the term may not extend beyond December 31, 2007;⁸

5) Nextel Partners contacted AT&T regarding the exercise of Nextel Partners' adoption rights, but AT&T refuses to voluntarily acknowledge and honor Nextel Partners' adoption rights;⁹ and

6) The adopted Sprint ICA replaces in its entirety the existing interconnection agreement between Nextel Partners and AT&T.¹⁰

On July 16, 2007, AT&T filed its Motion in this proceeding, in which AT&T contends that the FCC alone, and not this Commission, has jurisdiction to interpret and enforce AT&T Merger Commitments¹¹ and that the Sprint ICA is "expired" and, therefore, Nextel Partners did not request adoption of the Sprint ICA in a timely fashion under the Act.¹² The Commission should deny AT&T's Motion because:

1) State Commissions have exercised jurisdiction under the Act and state law to acknowledge a carrier's exercise of its adoption rights. The fact that such rights have been enhanced by the Merger Commitments does not divest the Commission of its authority to continue to oversee the exercise of such adoption rights. Instead, there is a long history of FCC and state commission precedent which clearly establishes that the FCC and the Commission continue to have *concurrent* jurisdiction under the Act and state law over any enhanced adoption rights granted by the AT&T interconnection-related Merger Commitments. This Commission

⁸ *Id.* at page 4-5, and Nextel Partners Petition Exhibit B; *see also* Docket No. 2007-215-C, *In the Matter of Petition of Sprint Communications Company L. P. and Sprint Spectrum L. P. d/b/a Sprint PCS for Arbitration of Rates, Terms and Conditions of Interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina d/b/a AT&T Southeast*, filed April 11, 2007 ("Sprint South Carolina Arbitration Petition").

⁹ Nextel Partners Petition, at pages 6-7.

¹⁰ *Id.*, at pages 1-2, 7.

¹¹ *See* Motion at pages 1, 3-6.

¹² *Id.*, at pages 1, 6-8.

has jurisdiction pursuant to both the Act and South Carolina law to acknowledge Nextel Partners' exercise of its right to adopt the Sprint ICA.

2) AT&T's contention that Nextel Partner' adoption is untimely because the Sprint ICA is "expired" is based upon both factually¹³ and legally erroneous premises. The Sprint ICA currently continues¹⁴ and is "deemed extended on a month-to-month basis"¹⁵, and AT&T has acknowledged to Sprint that the Sprint ICA can be extended 3 years pursuant to Merger Commitment No. 4.¹⁶ Accordingly, not only does the Sprint ICA continue to be effective, there has yet to be a determination by this Commission regarding the commencement date of the Sprint ICA 3-year extension.

AT&T's "timeliness" argument is legally deficient in two respects. First, Merger Commitment No. 1 does not contain any "time" restriction upon when a requesting carrier may adopt another ICA, providing without qualification that a carrier may adopt "**any entire effective interconnection agreement**" that complies with applicable law. Second, even if the Commission accepts AT&T's contention that the extension of the Sprint ICA commenced on

¹³ AT&T's Motion at page 1. For the purpose of this Response, Nextel Partners agrees with the request made by AT&T South Carolina at page 1 that the Commission take judicial notice of the existing interconnection agreements between AT&T South Carolina and Nextel Partners and between AT&T South Carolina and Sprint. Sprint further requests that the Commission take administrative notice of the record in the pending Sprint-AT&T Arbitration, Docket No. 2007-215-C.

¹⁴ Sprint ICA, Section 2.1, as amended, at page 815 and 833 ("If, as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, this Agreement shall continue on a month-to-month basis")

¹⁵ Sprint ICA, Section 3.3 at page 816 ("as of the date of expiration and conversion of this Agreement to a month-to-month term") and 3.4 ("this Agreement shall be deemed extended on a month-to-month basis").

¹⁶ See Sprint South Carolina Arbitration Petition, Docket No. 2007-215-C, Petition page 7, ¶ 14. FCC BellSouth Merger Order, at page 150, Appendix F, Merger Commitment No. 4 states:

The AT&T/BellSouth ILECs shall permit a requesting telecommunications carrier to extend its current interconnection agreement, **regardless** of whether its initial term has expired, for a period of up to three years, subject to amendment to reflect prior and future changes of law.

During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's 'default' provisions."

(Emphasis added).

December 31, 2004, over six months remained in the term of the Sprint ICA when Nextel Partners adopted it.

For the reasons stated above and explained in greater detail below, Nextel Partners respectfully requests that the Commission deny AT&T's Motion and acknowledge that, effective June 28, 2007, Nextel Partners adopted the existing Sprint ICA.

II. AT&T's Motion Must Be Decided Based Upon the Facts as Alleged in Nextel Partners' Petition and the Limited Undisputable Facts of Which the Commission Can Take Appropriate Administrative Notice.

A Motion to dismiss must, as a matter of law, address the sufficiency of the facts alleged in the Petition to state a cause of action. Generally, motions to dismiss are disfavored. "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint state any valid claim for relief. Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Food Lion, Inc. v. United Food and Commercial Workers Intern. Union, 351 S.C. 65, 78, 567 S.E.2d 251, 257 (S.C. Court App. 2002) (internal citations omitted) Thus, the question for the Commission is not whether it agrees or disagrees with Nextel Partners as to whether it will prevail on the merits in this docket. Instead, the question for the Commission to consider with regard to AT&T's motion is whether there is any theory at all under which Nextel Partners might prevail. If so, AT&T's motion to dismiss must be denied.

Notwithstanding the foregoing, Nextel Partners does not object to the Commission taking administrative notice of the existing interconnection agreement between AT&T South Carolina and Nextel Partners as requested by AT&T provided, however, the Commission likewise takes administrative notice of the record in the pending Sprint-AT&T South Carolina arbitration in Docket No. 2007-215-C. In so doing, in addition to the facts as stated in Nextel Partners' Petition for adoption, Nextel Partners also relies upon the provisions of the Sprint ICA and the

undisputed admissions made by AT&T in Docket No. 2007-215-C with respect to the Sprint ICA as identified herein.

The following are the essential operative facts that establish the existence of a matter within the jurisdiction of this Commission under Section 252(i) of the Act:

- The Sprint ICA is active and effective by virtue of its express terms under which it continues “on a month-to-month basis”¹⁷ and is “deemed extended on a month-to-month basis;”¹⁸
- AT&T acknowledged to Sprint that a 3-year extension of the Sprint ICA is available, but there is a dispute between AT&T and Sprint regarding when the 3-year extension commences;¹⁹
- Sprint has accepted a 3-year extension of the Sprint ICA and requested an amendment to implement its right to such 3-year extension;²⁰
- Sprint believes the term of the agreement ends March 19, 2010 while AT&T has taken a position, among other things, that the term may not extend beyond December 31, 2007;²¹
- The Commission has not yet made a determination in Docket No. 2007-215-C as to when the 3-year extension of the Sprint ICA commences;
- Nextel Partners has exercised its right, effective immediately, to adopt in its entirety the same Sprint ICA, as amended, that has been filed and approved in each of the 9 legacy-BellSouth states, including South Carolina;²²

¹⁷ Sprint ICA, Section 2.1 at page 815.

¹⁸ *Id.*, Section 3.4 at page 816.

¹⁹ Sprint South Carolina Arbitration Petition ¶ 13; AT&T Arbitration Motion to Dismiss and Answer ¶ 17.

²⁰ Sprint South Carolina Arbitration Petition ¶ 14; AT&T Arbitration Motion to Dismiss and Answer ¶ 18.

²¹ Sprint South Carolina Arbitration Petition, ¶ 15. AT&T Arbitration Motion to Dismiss and Answer ¶ 19.

²² Nextel Partners Petition, page 2; Nextel Partners Petition Exhibit B.

- Nextel Partners exercised such adoption rights pursuant to **both** the FCC-approved Merger Commitment Nos. 1 and 2 *and* 47 U.S.C. § 252(i);²³
- All relevant state-specific differences among the 9 legacy-BellSouth states are already contained within the Sprint ICA, including South Carolina. Since the same state-specific terms are applicable to Nextel Partners on a state-by-state basis, there are no “state-specific pricing and performance plans and technical feasibility” issues pursuant to Merger Commitment No. 1. Likewise, because the Sprint ICA is already TRRO compliant and has an otherwise effective change of law provision, there is no issue preventing Nextel Partners from adopting the Sprint ICA in each applicable state, including South Carolina, pursuant to Merger Commitment No. 2;²⁴
- The adopted Sprint ICA replaces in its entirety the existing interconnection agreement between Nextel Partners and AT&T.²⁵

It is these facts, and these facts alone, that the Commission may consider in determining whether to dismiss Nextel Partners’ Petition.

III. The Commission Has Authority to Acknowledge Nextel Partners’ Exercise of Its Right to Adopt the Sprint ICA, and Such Authority Is Not Altered by the Merger Commitments.

Similar to the jurisdictional arguments in response to the Sprint arbitration Petition,²⁶ AT&T asserts in this case as well that “the FCC alone possesses the jurisdiction to interpret and enforce the subject merger commitments”²⁷ and thereby suggests the Commission has no authority to acknowledge Nextel Partners’ exercise of its right to adopt the Sprint ICA. Case law

²³ *Id.*, pages 1, 3-4.

²⁴ *Id.*, pages 6.

²⁵ *Id.*, pages 1-2, 7.

²⁶ See AT&T Arbitration Motion to Dismiss and Answer ,Docket No. 2007-215-C, at pages 3-4.

²⁷ See AT&T Motion, at pages 5-6.

to the contrary, however, clearly establishes that state Commissions have historically acknowledged carriers' exercise of their rights to adopt existing interconnection agreements, and the *FCC BellSouth Merger Order* has not diminished the Commission's authority.

A. The Commission Has Authority to Acknowledge Nextel Partners' Exercise of Its Right to Adopt the Sprint ICA.

Nextel Partners' right to adopt the currently effective interconnection agreement between Sprint and AT&T is an interconnection right that arises as a result of an FCC order. The fact that resolution of the parties' dispute regarding such extension involves this Commission's interpretation and application of "federal law" provides no reason whatsoever to dismiss Nextel Partners' Petition. While not binding on the FCC, "State commissions often must apply federal rules in reaching [their] decisions."²⁸ Further, the Act expressly provides a jurisdictional scheme of "cooperative federalism" under which Congress and the FCC have specifically designated areas in which they anticipate that state commissions have a role,²⁹ which undeniably includes matters relating to interconnection pursuant to Sections 251 and 252 of the Act.

AT&T contends that only the FCC has jurisdiction to enforce a condition contained in an FCC order. The FCC's authority to enforce its own order is clear. Section 503(b) of the Communications Act authorizes the FCC to impose a forfeiture penalty upon "[a]ny person who is determined by the [FCC] ... to have ... willfully or repeatedly failed to comply with any of the provisions of ... any ... order issued by the [FCC]."³⁰ United States Attorneys are required, upon

²⁸ *In Re Generic Proceeding to Examine Issues Related to BellSouth Telecommunications, Inc.'s Obligations to Provide Unbundled Network Elements*, Order on Remaining Issues, GPSC Docket No. 19341-U (March 2, 2006), at 20.

²⁹ See GPSC Docket No. 19341-U, *In Re Generic Proceeding to Examine Issues Related to BellSouth Telecommunications, Inc.'s Obligations to Provide Unbundled Network Elements*, Order Initiating Hearings to Set a Just and Reasonable Rate Under Section 271 (issued January 20, 2006), at 3: "Far from claiming the exclusive right to set rates pursuant to this [just and reasonable] standard, the FCC expressly recognizes the application of such a standard at both the state and federal level."

³⁰ 47 U.S.C. § 503(b)(1).

application by the FCC, to prosecute court proceedings to enforce FCC orders or seek criminal penalties for their violation.³¹ But in resolving an interconnection dispute, a matter clearly within this Commission's jurisdiction under Section 252 of the Telecommunications Act³², the Commission must consider and apply the requirements of the *FCC BellSouth Merger Order*. It is clear that this Commission must apply applicable law, including the *FCC BellSouth Merger Order*, to resolve a dispute before it that is within its jurisdiction.

The Alabama Public Service Commission ("APSC") has previously determined that it has the authority to grant a carrier's request, pursuant to both FCC merger conditions and Section 252(i) of the Act, to adopt an interconnection agreement.³³

We have reviewed the request set forth in DeltaCom's petition and find that formal approval of DeltaCom's election to adopt the terms and conditions of the aforementioned GTE/Time Warner Agreement is consistent with the public interest, convenience and necessity. The terms and conditions established by the FCC in its Bell Atlantic/GTE Merger Order indeed allow a carrier operating in any Bell Atlantic/GTE state to opt-in to an entire interconnection agreement in any other Bell Atlantic/GTE state so long as the agreement in question was voluntarily negotiated and meets the timing and location requirements established by the FCC. It appears that the North Carolina agreement between GTE and Time Warner submitted by DeltaCom with its Petition meets the requirements established by the FCC in its Bell Atlantic/GTE Merger Order. ... DeltaCom is also correct in its assessment that the provisions of 47 U.S. C. Section 252(i) allow carriers wide latitude to adopt the terms and conditions of existing agreements that are approved pursuant to the provisions of 47 U.S.C. Section 252.

Thus, the APSC has previously granted precisely the kind of contested adoption request that Nextel Partners makes by and through its Petition in this proceeding.

In its Motion, AT&T cites to two Florida Public Service Commission ("FPSC" or "Florida Commission") proceedings, the *IDS* case³⁴, and the *Sunrise Order* case,³⁵ in support of

³¹ 47 U.S.C. §§ 401(c) & 502.

³² 47 U.S.C. § 252.

³³ APSC Informal Docket U-4320, *In Re Petition for Approval of Election to Adopt Terms and Conditions of Previously Approved Interconnection Agreement Pursuant to 47 U.S.C. Section 252(i) and the FCC's Bell Atlantic/GTE Merger Conditions*, Order (issued May 27, 2001) ("DeltaCom Order"), at 2-3. A copy of the APSC's DeltaCom Order is attached hereto as **Exhibit "B"**.

its jurisdictional arguments. The FPSC expressly relied upon the *Sunrise Order* in the *IDS* case. Both cases actually support Nextel Partners' position in this proceeding: they stand for the proposition that the Commission can interpret and apply federal law in the course of exercising the authority that is conferred to it under the Telecommunications Act and state law.

In the *Sunrise Order*, Supra Telecommunications and Information Systems, Inc. sought to have the FPSC provide a remedy for AT&T's alleged violation of the Section 222 Confidentiality of Carrier Information provision of the Act. The Florida Commission determined that, absent finding that AT&T's conduct was anticompetitive behavior prohibited under state law, the FPSC could not provide a remedy because it had not otherwise been conferred jurisdiction under the Act with respect to Section 222. Similarly, in *IDS*, the two out of five counts of IDS's informal complaint that were subject to dismissal were Count Three, which sought a finding that AT&T had violated a private settlement agreement, and Count Five, which alleged "anticompetitive behavior in violation of the Telecommunications Act of 1996." Here, by contrast, the Commission has expressly been granted authority to arbitrate issues between carriers relating to interconnection agreements and to approve negotiated or arbitrated agreements under 47 USC Sections 252(b) and 252(c), respectively.

While the Merger Commitments provide requesting carriers with expanded adoption rights in addition to Section 252(i), the fact that the Commission's acknowledgement of Nextel Partners' exercise of any of its adoption rights may involve the Commission's interpretation and

³⁴ See *In Re: Complaint against BellSouth Telecommunications, Inc. for Alleged Overbilling and Discontinuance of Service, and Petition for Emergency Order Restoring Service, by IDS Telecom LLC*, Order Granting BellSouth's Partial Motion to Dismiss at page 8, FPSC Docket No. 031125-TP, Order No. PSC-04-0423-FOF-TP (April 26, 2004) ("*IDS*").

³⁵ *In Re: Complaint by Supra Telecommunications and Information Systems, Inc. against BellSouth, Inc. Regarding BellSouth's Alleged Use of Carrier-to-Carrier Information*, Final Order On BellSouth's Alleged Use of Carrier to Carrier Information at page 4, fn. 1, FPSC Docket No. 030349-TP, Order No. PSC-03-1392-FOF-TP (December 11, 2003) ("*Sunrise Order*").

application of “federal law” provides no reason whatsoever to dismiss any aspect of Nextel Partners’ Petition. Indeed, every time an ILEC interposes an objection to a carrier’s exercise of any adoption right, the Commission is called upon to construe the Act, FCC orders and federal court decisions related to both the Act and said orders. While not binding on the FCC, it is too commonplace to be disputed that state commissions may interpret and apply federal law in the exercise of their jurisdiction under the Act.³⁶

As recognized by the Florida Commission in the *Sunrise Order*, the Act expressly provides a jurisdictional scheme of “cooperative federalism” under which Congress and the FCC have specifically designated areas in which they anticipate that state commissions have a role,³⁷ which undeniably includes matters relating to approval of interconnection agreements consistent with the Act and orders of the FCC.

Contrary to the relief sought by the carriers in the *Sunrise Order* and *IDS* cases that the Florida Commission had no power under the Act to grant, through its Petition Nextel Partners has sought the same relief that state Commissions have historically and repeatedly rendered to

³⁶ See *IDS* at page 8 (the Florida Commission “find[s] BellSouth’s argument is without merit to the extent that it argues that IDS’s complaint fails to state a cause of action merely because the Complaint requires us to refer to a privately negotiated settlement agreement and federal law to settle the dispute ... Thus, the fact that a count of this Complaint asks this Commission to interpret and apply federal law is not in and of itself reason to dismiss that portion of the complaint”).

³⁷ See *Sunrise Order* at footnote 1; see also *In Re: Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth, Inc.*, Order, Tennessee Regulatory Authority Docket No. 01-00193, pp. 5-6 (June 28, 2002) (“To Implement the 1996 Act, Congress sought the assistance of state regulatory agencies. In what has been termed “cooperative federalism,” Congress partially flooded the existing statutory landscape with specific preempting federal requirements, deliberately leaving numerous islands of State responsibility... No generalization can therefore be made about where, as between federal and State agencies, responsibility lies for decisions. The areas of responsibility are a patchwork and the dividing lines are sometimes murky. Certain provisions of the 1996 Act, such as those related to arbitrating and approving interconnection agreements mandate that State Commissions apply federal law within their existing State procedural structures.”). See also *Verizon Corp. v. FCC*, 535 U.S. 467, 489, 122 S.Ct. 1646, 1661 (2002) (With respect to Congress’ passage of the Act, the Supreme Court noted that “[t]he approach was deliberate, through a hybrid jurisdictional scheme[.]”); and *Lucre, Inc. v. Michigan Bell Telephone Co.*, No. 06-1144, 2007 WL 1580101, p. 1 (6th Cir. May 31, 2007) (“The Act has been called one of the most ambitious regulatory programs operating under ‘cooperative federalism,’ and creates a regulatory framework that gives authority to state and federal entities in fostering competition in local telephone markets.”)

carriers that exercise their right to adopt another existing ILEC/Carrier interconnection agreement under either an FCC merger condition³⁸ or 252(i)³⁹, *i.e.*, Commission acknowledgment that Nextel Partners has in fact exercised its right to adopted the existing Sprint ICA.

The interpretation and application of federal law in the context of resolving an interconnection dispute within this Commission's jurisdiction is not the enforcement of a law that the FCC has jurisdiction to enforce. Accordingly, this Commission should reject AT&T's argument that the FCC's authority to enforce the *FCC BellSouth Merger Order* deprives this Commission of jurisdiction to rule upon an interconnection dispute.

B. The *FCC BellSouth Merger Order* Does Not Restrict, Supersede or Otherwise Alter the Commission's Authority to Acknowledge Nextel Partners' Exercise of Its Right to Adopt the Sprint ICA.

The fact that requesting carriers have been granted expanded adoption rights by virtue of the *FCC BellSouth Merger Order* does not *divest* the state Commission of its existing authority to acknowledge a carrier adoption pursuant to Section 252(i) of the Act, or any alternative basis which Commissions have relied upon under state law, to acknowledge a carrier adoption pursuant to an FCC merger order.⁴⁰ The FCC has repeatedly and expressly recognized in its

³⁸ See DeltaCom Order, at 2. *In Re: Petition for Acknowledgment of Adoption of Existing Agreement Between Verizon Maryland Inc. f/k/a Bell Atlantic-Maryland, Inc. and Business Telecom, Inc., by Winstar Communications, L.L.C.*, Order Approving Petition for Acknowledgment of Adoption of an Agreement Under FCC Approved Merger Conditions and Granting Staff Authority To Administratively Acknowledge Adoption of Agreements Under FCC Approved Merger Conditions and Order Amending Administrative Procedures Manual, FPSC Docket No. 020353-TP, Order No. PSC-02-1174-FOF-TP (August 28, 2002) ("*Verizon Florida Petition for Acknowledgement*").

³⁹ See *In the Matter of Interconnection Agreement Between BellSouth Telecommunications, Inc. and Allegiance Telecom of North Carolina, Inc.*, Order Approving Interconnection Agreement, NCUC Docket No. P-55, Sub 1284 (May 31, 2001)(Order approving a non-contested 252(i) adoption agreement as a matter for review pursuant to Section 252(e) of the Act); *Z-Tel Florida Notice of Adoption*; *Volo Florida Petition for Adoption*.

⁴⁰ See *e.g. Verizon Florida Petition for Acknowledgement* (to acknowledge an FCC merger commitment adoption by Winstar in Florida of a Verizon interconnection agreement that had been approved by the Maryland Commission, the Commission stated that "we acknowledge this adopted agreement pursuant to . . . *Florida Statutes*, wherein the Legislature requires us to encourage and promote competition"). Winstar's FCC merger commitment adoption in *Verizon* is distinguishable from the FCC merger commitment adoption aspects of Nextel Partners' adoption based on the simple fact that Nextel Partners is adopting the Sprint ICA as previously approved

merger Orders that adoption of merger conditions does not limit the authority of the states to impose or enforce requirements, which can even go beyond FCC-required conditions.⁴¹ The FCC not only expects the states to be involved in the ongoing administration of interconnection-related merger conditions, but recognizes the states' concurrent jurisdiction to resolve interconnection-related disputes pursuant to § 252. For example, in the *GTE/Bell Atlantic* merger the FCC provided:

Although the merged firm will offer to amend interconnection agreements or make certain other offers to state commissions in order to implement several of the conditions, nothing in the conditions obligates carriers or state commissions to accept any of Bell Atlantic/GTE's offers. The conditions, therefore, do not alter any rights that a telecommunications carrier has under an existing negotiated or arbitrated interconnection agreement. **Moreover, the Applicants also agree that they will not resist the efforts of state commissions to administer the conditions by arguing that the relevant state commission lacks the necessary authority or jurisdiction.**⁴²

Regarding implementation of the merged firm's interconnection-related "Most-Favored-Nation" and "Multi-State Interconnection and Resale Agreements" commitments, the FCC also made it clear that "[d]isputes regarding the availability of an interconnection arrangement ... shall be resolved pursuant to negotiation between the parties or by the relevant state commission under 47 U.S.C. § 252 to the extent applicable."⁴³

by this Commission. The distinction that Nextel Partners draws between its adoption of the Sprint ICA pursuant to the Merger Commitment No. 1 and 252(i) is that Merger Commitment No. 1 imposes no time restriction upon Nextel Partners' exercise of its right to adopt the Sprint ICA.

⁴¹ See *In the Matter of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control*, CC Docket No. 98-184, ¶ 254 (Adopted: June 16, 2000, Released: June 16, 2000) ("GTE/Bell Atlantic"); and *In the Applications of Ameritech Corp. and SBC Communications, Inc., For Consent to Transfer Control*, CC Docket No. 98-141, ¶ 358 (Adopted: October 6, 1999, Released: October 8, 1999) ("Ameritech/SBC").

⁴² *GTE/Bell Atlantic* at ¶ 348 (emphasis added).

⁴³ See also, *Ameritech/SBC* at "Appendix C CONDITIONS," Section XII. Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements ¶¶ 42, 43, Section XII. Multi-State Interconnection and Resale Agreements ¶ 44, and XVIII. Alternative Dispute Resolution through Mediation ¶ 54 ("Participation in the ADR mediation process established by this Section is voluntary for both telecommunications carriers and state commissions. The process is not intended and shall not be used as a substitute for resolving disputes regarding the negotiation of interconnection agreements under Sections 251 and 252 of the Communications Act, or for resolving any disputes under Sections 332 of the Communications Act. The ADR mediation process shall be utilized to

Case law subsequent to the *GTE/Bell Atlantic* and *Ameritech/SBC* merger also supports the position that state commissions have continuing, concurrent jurisdiction to enforce interconnection-related merger conditions pursuant to Section 252. In *Core Communications*,⁴⁴ CLECs filed a complaint action against SBC at the FCC over alleged violations of *Ameritech/SBC* merger conditions. SBC asserted that the FCC lacked jurisdiction to hear the complaint under Sections 206 and 208 of the Act on a theory that the state's authority under Section 251 and 252 overrode the FCC's Section 206 and 208 enforcement jurisdiction. The FCC determined that it *also* had 206 and 208 enforcement authority (as opposed to finding that only the FCC had enforcement authority) and, in her concurring opinion, then Commissioner Abernathy stated:

This Order holds that the Commission has concurrent jurisdiction with the state commissions to adjudicate interconnection disputes. I agree that the plain language of the Act compels this conclusion. But I also believe that there are significant limitations on the circumstances in which complainants will actually be able to state a claim under section 208 for violations of section 251(c) and the Commission's implementing rules.

... as the Order acknowledges, the section 252 process of commercial negotiation and arbitration provides the primary means of resolving disputes about what should be included in an interconnection agreement – its change of law provisions, for example – likely would foreclose any remedy under section 208.⁴⁵

Similarly, in *Ameritech ADS*, in the context of granting “Alternative Telecommunications Utility” certification to a post-merger *Ameritech/SBC* affiliate, Commissioner Joe Mettner found it necessary to issue a concurring opinion to the Wisconsin Public Service Commission's

resolve local interconnection agreement disputes between SBC/Ameritech and unaffiliated telecommunications carriers at the unaffiliated carrier's request”).

⁴⁴ *In the Matter of Core Communications, Inc. and Z-Tel Communications, Inc. v. SBC Communications, et al.*, Memorandum Opinion and Order, 18 FCC Rcd 7568, 2003 FCC Lexis 2031 (2003) (“*Core Communications*”) *vacated and remanded on other grounds*, 407 F.3d 1223 (U.S.App.D.C. 2005) (vacated for further proceedings in which Commission may develop and apply its interpretation of the conditions under which CLECs may waive specified merger rights).

⁴⁵ *Core Communications* at 17.

(“WPSC”) decision in order to address statements made by a dissenting Commissioner in light of the FCC’s *Ameritech/SBC* merger Order:

It is important that the public not be left with inaccurate statements concerning the extent, if any, to which FCC action in merger cases alters, modifies or preempts the federal statutory scheme of shared responsibility between the state commissions and the FCC over matters relating to opening local exchange markets to competition and the monitoring of the terms and conditions of interconnection agreements entered into by the ILEC’s with competitors.

...

It is fundamental to the scheme of shared regulation found in the Telecommunications Reform Act of 1996 that state commissions and the FCC preserve their respective spheres of authority to ensure that the general obligations of ILEC’s to provide nondiscriminatory interconnection features to requesting entities, and that the states retain a particularly important role in the review and approval of interconnection agreements. 47 U.S.C. §§ 251(c) and (d), 252(e).

...

The Merger Order simply doesn’t stand as any valid extra-jurisdictional reconfiguration of state v. federal authority in these matters, as the FCC has been careful to indicate in its own Merger Order.

...

... it may well be true, as the dissent has noted, that the FCC in some sense has “final enforcement authority” over issues concerning SBC/Ameritech’s OSS, to the extent that the FCC may preempt any state commission failing to fulfill its responsibilities under 47 U.S.C. 252 in reviewing interconnection agreements. It is not true, however, that the Merger Order does anything (as indeed it may not) to alter the primary authority of state commissions in review of interconnection agreements, and the terms and conditions of same.⁴⁶

Based on the foregoing, it is apparent that not only do the states continue to retain 251-252 authority over disputes regarding interconnection-related merger conditions in an FCC order,

⁴⁶ *Petition of Ameritech Advanced Data Services of Wisconsin, Inc. for Authorization to Resell Frame Relay Switched Multimegabit Data, and Asynchronous Transfer Mode Services on an Intrastate Bases and to Operate as an Alternative Telecommunications Utility in Wisconsin; Investigation into the Digital Services and Facilities of Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), Final Decision and Certificate, 2000 Wisc. PUC Lexis 36 (Jan. 2000) (“Ameritech ADS”).*

but also that the FCC itself has expressed a belief that even its complaint enforcement authority may be considered secondary to the states with respect to such disputes.

C. The FCC BellSouth Merger Order Expressly Recognizes the States' Concurrent Authority over AT&T's Interconnection-Related Merger Commitments.

Appendix F to the *FCC BellSouth Merger Order* contains the Merger Commitments that the FCC adopted in conjunction with its approval of the AT&T/BellSouth merger. AT&T asserts that the FCC “explicitly reserved its own jurisdiction over the merger commitments” by virtue of the following language in the *Order*: “[f]or the avoidance of doubt, unless otherwise stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC.”⁴⁷ AT&T then goes on to assert that “[n]owhere in the Merger Order does the FCC provide that the interpretation of merger commitments is to occur outside the FCC.”⁴⁸ This is simply not an accurate statement with respect to Appendix F.

The FCC clearly recognized in Appendix F that it has no authority to alter the states’ *concurrent* statutory jurisdiction under the Act over interconnection matters addressed in the Merger Commitments. The paragraph immediately preceding the language relied upon by AT&T states:

*It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.*⁴⁹

It should be noted that the above language was not part of the proposed Merger Commitments as filed by AT&T with the FCC via Mr. Robert Quinn’s December 28, 2006 letter. Rather, it was **specifically added by the FCC**. This language serves the obvious purpose of

⁴⁷ Motion at page 4.

⁴⁸ *Id.*

⁴⁹ *FCC BellSouth Merger Order* at 147, APPENDIX F (emphasis added).

recognizing, similar to what the FCC has done in prior merger orders as already discussed herein, that the Act is designed with dual authority for both the states and the FCC. The *FCC BellSouth Merger Order* reflects absolutely no attempt by the FCC, nor could it legitimately do so, to alter the states' primary responsibility for initial review and acknowledgement of the agreement to be in effect between two parties. As recognized in the Act and articulated by the Wisconsin PSC in *Ameritech ADS*, the FCC's role in this regard is secondary, unless the state fails to take action or, as stated by the FCC itself in *Core Communications*, a carrier elects to pursue a direct enforcement action with the FCC pursuant to Section 206 and 208.

Considering the former SBC's post-merger action in the *Core Communications* case (*i.e.*, contending the FCC lacked enforcement jurisdiction over a merger condition complaint), the language relied on by AT&T merely serves to make it clear that the FCC's enforcement authority remains an **available** avenue, as opposed to the **exclusive** avenue, to address any AT&T interconnection-related Merger Commitment violations. Appendix F does not contain, nor could it, any provision that even attempts to divest the states of their jurisdiction over interconnection-related merger commitment matters and vest **exclusive** jurisdiction over such matters in the FCC.

Indeed, when the FCC's Wireline Competition Bureau was faced with an issue similar to the one raised by AT&T's Motion, it relied upon its authority pursuant to § 252(e)(5) to act in the stead of a state commission in arbitrating interconnection agreements, and not upon its authority as a Bureau of the FCC, in resolving the issue. In the *GTE/Bell Atlantic* merger Order, the merged firm was required to "offer telecommunications carriers, subject to the appropriate state commission's approval, an option of resolving interconnection agreement disputes through

an alternative dispute resolution mediation process that may be state-supervised.”⁵⁰

Subsequently, the Wireline Competition Bureau arbitrated the terms of interconnection agreements between Verizon and the former WorldCom, Inc. and former AT&T Corp. after the Virginia Corporation Commission declined to do so.⁵¹

In the *WorldCom Virginia Arbitration*, Verizon and WorldCom disagreed concerning the dispute resolution provision to be included in their arbitrated interconnection agreement. WorldCom contended that a sentence proposed by Verizon should be deleted in order to make clear that the alternative dispute resolution procedure required by the *GTE/Bell Atlantic* merger condition remained available to WorldCom, while Verizon contended that the Bureau, acting as a Section 252(b) arbitrator, lacked the authority to require the inclusion of an arbitration provision in the interconnection agreement. The Bureau disagreed, ruling that “[t]he Act gives us broad authority, *standing in the shoes of a state commission*, to resolve issues raised in this proceeding.”⁵² Indeed, the Bureau found that failing to give effect to the merger condition when arbitrating an interconnection agreement “would essentially modify that Commission order, which we cannot do”⁵³ The Commission has no more authority to modify the AT&T/BellSouth adoption Merger Commitments than the Wireline Competition Bureau had to modify the *GTE/Bell Atlantic* merger order. Like the Wireline Competition Bureau when it was arbitrating an interconnection agreement under § 252 on behalf of a state Commission, this Commission must interpret and apply the Merger Commitments consistent with the FCC Order in acknowledging Nextel Partners’ exercise of its right to adopt the Sprint ICA.

⁵⁰ *GTE/Bell Atlantic* at ¶ 317.

⁵¹ *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, DA-02-1731, CC Docket No. 00-218 *et al.*, (Adopted July 17, 2002; Released July 17, 2002) (“*WorldCom Virginia Arbitration*”).

⁵² *WorldCom Virginia Arbitration* at ¶ 703.

⁵³ *Id.* at ¶ 702.

And finally, it is obvious from the express language of the *FCC BellSouth Merger Order* that the FCC understood the state Commissions would be involved in reviewing adoptions under Merger Commitment No. 1. The last requirement of Merger Commitment No. 1 is that the adoption be “consistent with the laws and regulatory requirements of, the state for which the request is made.” This Commission is, unquestionably, the forum with authority to review Nextel Partners’ Petition for adoption in order to ensure its consistency with the laws and regulatory requirements of South Carolina.

IV. AT&T’s Argument that Nextel Partners’ Adoption of the Sprint ICA Is Untimely Ignores the Facts, Commission Precedent to the Contrary and Its Own Prior Positions on the Subject.

AT&T contends the Sprint ICA is “expired”⁵⁴ and, therefore, Nextel Partners did not timely adopt the Sprint ICA within the “reasonable period of time” that AT&T was required to make the Sprint ICA available for adoption pursuant to 47 C.F.R. § 51.809(c).⁵⁵ AT&T’s position on these points is factually and legally inadequate to support dismissal.

Factually, AT&T premises its conclusion that the Sprint ICA is “expired” upon its request that the Commission take judicial notice of the Sprint ICA, and its sole assertion that “[t]he ICA was entered into on January 1, 2001, and was amended twice to extend the term to December 31, 2004.”⁵⁶ AT&T, however, fails to recognize either: a) the express provisions of the Sprint ICA that establish it currently continues and is “deemed *extended* on a month-to-month basis,”⁵⁷ or b) the fact that AT&T admits without qualification that it acknowledged to

⁵⁴ Motion at pages 1, 7-8.

⁵⁵ Motion at pages 6-8. 47 C.F.R. § 51.809(c) states: “Individual agreements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under Section 252(h) of the Act.”

⁵⁶ Motion at page 7, footnote 20.

⁵⁷ Sprint ICA, Section 3.4 at page 816 (emphasis added).

Sprint that the Sprint ICA can be extended 3 years pursuant to Merger Commitment No. 4.⁵⁸

Based on the foregoing additional undisputable facts, contrary to AT&T's assertion, the Sprint ICA not only continues to be effective, but by Sprint's exercise of its right to a 3-year extension of the Sprint ICA, the Sprint ICA is not scheduled to expire until March 19, 2010. Even if AT&T were correct that Sprint may only extend the term of the Sprint ICA until December 31, 2007, over six months would remain in the term of the Sprint ICA when Nextel Partners exercised its right to adopt it.

From a legal perspective, AT&T cannot overcome two hurdles. First, Merger Commitment No. 1 does not contain any language to impose any time limitation as to when Nextel Partners was required to exercise its right to adopt the Sprint ICA pursuant to Merger Commitment No. 1. Thus, the "reasonable period of time" limitation that AT&T contends exists as to a non-merger 252(i) adoption by virtue of 47 C.F.R. § 51.809(c) is simply inapplicable to an adoption under Merger Commitment No. 1.

Second, even if the requirement in 47 C.F.R. § 51.809(c) applied, the "reasonable period time" limitation is satisfied because more than six months would remain in the term. In a previous arbitration involving AT&T South Carolina (then "BellSouth") and Alltel Communications, Inc., this Commission held "that the Interconnection Agreement should not contain a six-month prior-to-termination restriction. While the Commission recognizes that there should be some limit on the length of time to opt into an interconnection agreement, the Commission further recognizes that a six-month time period may not be reasonable in all circumstances. Therefore, the Commission rejects the language proposed by BellSouth."⁵⁹

⁵⁸ AT&T Motion to Dismiss and Answer, Docket No. 2007-215-C, at page 7 ¶ 17.

⁵⁹ *In Re: Petition of ALLTEL Communications, Inc. for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 Respecting an Interconnection Agreement with BellSouth Telecommunications, Inc.* Order No. 2001-328, Docket No. 2001-31-C (April 16, 2001), pp. 29-33.

BellSouth had argued that "Alltel should not be allowed to opt into an existing interconnection agreement that has less than six months to run before it expires."⁶⁰ Thus, AT&T South Carolina's predecessor, BellSouth, has taken the position that interconnection agreements may be adopted up until six months before expiration.

AT&T cites to two *Global NAPs* cases under which the respective state Commissions held that given the limited amount of time remaining in the interconnection agreements (10 and 7 months, respectively), allowing the requesting CLEC to opt-in would be unreasonable.⁶¹ Alltel previously cited these exact same two *Global NAPs* cases and the GPSC's *Volo* order in requesting the Florida Commission to dismiss Volo's Notice of Adoption of an agreement that was set to expire within 72 days after the adoption date, but was likely to remain in effect beyond the stated termination date.⁶² The FPSC recognized that there is "no definitive standard set forth by the FCC as to what constitutes a reasonable time" and denied Alltel's Motion to Dismiss because, on its face, Volo's Notice of Adoption stated a cause of action on which relief could be granted.⁶³

As in the Florida *Volo* proceeding, Nextel Partners' Petition for adoption states a cause of action on its face, and AT&T has failed to establish as a matter of fact or law that Nextel Partners' Petition for adoption is untimely.

⁶⁰ *Id.*

⁶¹ Motion, at pages 6-7, citing *In Re: Global NAPS South, Inc.*, 15 FCC Rcd 23318 (August 5, 1999) and *In Re: Notice of Global NAPS South, Inc.*, Case No. 8731 (Md. PSC July 15, 1999) (collectively "*Global NAPs* cases").

⁶² *In Re: Petition by Volo Communication of Florida, Inc. d/b/a Volo Communications Group of Florida, Inc. for Adoption of Existing Interconnection Agreement Between ALLTEL Florida, Inc. and Level 3 Communications, LLC*, Order Denying Motion to Dismiss and Holding Proceedings in Abeyance, FPSC Docket No. 040343-TP, Order No. PSC-04-1109-PCO-TP (November 9, 2004). Nextel Partners notes that, even if Sprint had not extended the term of the Sprint ICA pursuant to Merger Commitment No. 4, the Sprint ICA has remained in effect for over two and one-half years beyond its stated expiration date.

⁶³ *Id.*

V. NEXTEL PARTNERS WAS NOT REQUIRED TO INVOKE THE DISPUTE RESOLUTION PROVISIONS OF ITS PRIOR AGREEMENT BEFORE EXERCISING ITS RIGHT TO ADOPT THE SPRINT ICA

Without citation to a single legal authority, AT&T contends that because the Nextel Partners agreement had a provision regarding the adoption of agreements, and Nextel Partners disagreed with AT&T regarding Nextel Partners' adoption of the Sprint ICA, "Nextel Partners was contractually bound to follow the dispute resolution process contained in the parties' agreement".⁶⁴ This is not a new AT&T argument. In attempting to avoid a unilateral adoption by Z-Tel of a Florida AT&T/Network Telephone Corporation ("Network") interconnection agreement, AT&T likewise claimed that "Z-Tel did not comply with the terms of its existing interconnection agreement concerning adoptions" and argued that Z-Tel's adoption of the Network agreement should be rejected.⁶⁵ The Florida Commission found that "Z-Tel's adoption [was] well within its statutory right under § 252(i) to opt-in to such an agreement in its entirety", that "[b]y the very fact of the Network agreement being active and effective, Z-Tel [was] within its rights to adopt", and accepted Z-Tel's Notice of Adoption.⁶⁶

Nextel Partners was clearly not required to follow an "adoption process" contained in its prior agreement in order to adopt the Sprint ICA. It logically follows, then, that there is no basis for requiring Nextel Partners to engage in a dispute resolution process based upon AT&T's failure to voluntarily honor and acknowledge its obligation to make the Sprint ICA available to Nextel Partners.

⁶⁴ Motion, at page 9.

⁶⁵ *Z-Tel Florida Notice of Adoption*, FPSC Docket No. 040779-TP, Order No. PSC-05-0158-PAA-TP.

⁶⁶ *Id.*

VI. Conclusion

For all of the reasons stated above, AT&T has failed to demonstrate that it is entitled to dismissal as matter of fact or law. Accordingly, Nextel Partners respectfully requests that the Commission deny AT&T's Motion in its entirety and, administratively acknowledge that, effective June 28, 2007, Nextel Partners adopted the existing Sprint ICA.

Respectfully submitted this 20th day of August, 2007.

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EXHIBIT A

Federal Communications Commission

FCC 06-189

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
)	
AT&T Inc. and BellSouth Corporation)	WC Docket No. 06-74
Application for Transfer of Control)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: December 29, 2006

Released: March 26, 2007

By the Commission: Chairman Martin and Commissioner Tate issuing a joint statement;
Commissioners Copps and Adelstein concurring and issuing separate statements;
Commissioner McDowell not participating.

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APPENDIX F**Conditions**

The Applicants have offered certain voluntary commitments, enumerated below. Because we find these commitments will serve the public interest, we accept them. Unless otherwise specified herein, the commitments described herein shall become effective on the Merger Closing Date. The commitments described herein shall be null and void if AT&T and BellSouth do not merge and there is no Merger Closing Date.

It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.

MERGER COMMITMENTS

For the avoidance of doubt, unless otherwise expressly stated to the contrary, all conditions and commitments proposed in this letter are enforceable by the FCC and would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter.

Repatriation of Jobs to the U.S.

AT&T/BellSouth¹ is committed to providing high quality employment opportunities in the U.S. In order to further this commitment, AT&T/BellSouth will repatriate 3,000 jobs that are currently outsourced by BellSouth outside of the U.S. This repatriation will be completed by December 31, 2008. At least 200 of the repatriated jobs will be physically located within the New Orleans, Louisiana MSA.

Promoting Accessibility of Broadband Service

1. By December 31, 2007, AT&T/BellSouth will offer broadband Internet access service (*i.e.*, Internet access service at speeds in excess of 200 kbps in at least one direction) to 100 percent of the residential living units in the AT&T/BellSouth in-region territory.² To meet this commitment, AT&T/BellSouth will offer broadband Internet access services to at least 85 percent of such living units using wireline technologies (the "Wireline Buildout Area"). AT&T/BellSouth will make available broadband Internet access service to the remaining living units using alternative technologies

¹ AT&T/BellSouth refers to AT&T Inc., BellSouth Corporation, and their affiliates that provide domestic wireline or Wi-Max fixed wireless services.

² As used herein, the "AT&T/BellSouth in-region territory" means the areas in which an AT&T or BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i). "AT&T in-region territory" means the area in which an AT&T operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i), and "BellSouth in-region territory" means the area in which a BellSouth operating company is the incumbent local exchange carrier, as defined in 47 U.S.C. § 251(h)(1)(A) and (B)(i).

and operating arrangements, including but not limited to satellite and Wi-Max fixed wireless technologies. AT&T/BellSouth further commits that at least 30 percent of the incremental deployment after the Merger Closing Date necessary to achieve the Wireline Buildout Area commitment will be to rural areas or low income living units.³

2. AT&T/BellSouth will provide an ADSL modem without charge (except for shipping and handling) to residential subscribers within the Wireline Buildout Area who, between July 1, 2007, and June 30, 2008, replace their AT&T/BellSouth dial-up Internet access service with AT&T/BellSouth's ADSL service and elect a term plan for their ADSL service of twelve months or greater.

3. Within six months of the Merger Closing Date, and continuing for at least 30 months from the inception of the offer, AT&T/BellSouth will offer to retail consumers in the Wireline Buildout Area, who have not previously subscribed to AT&T's or BellSouth's ADSL service, a broadband Internet access service at a speed of up to 768 Kbps at a monthly rate (exclusive of any applicable taxes and regulatory fees) of \$10 per month.

Statement of Video Roll-Out Intentions

AT&T is committed to providing, and has expended substantial resources to provide, a broad array of advanced video programming services in the AT&T in-region territory. These advanced video services include Uverse, on an integrated IP platform, and HomeZone, which integrates advanced broadband and satellite services. Subject to obtaining all necessary authorizations to do so, AT&T/BellSouth intends to bring such services to the BellSouth in-region territory in a manner reasonably consistent with AT&T's roll-out of such services within the AT&T in-region territory. In order to facilitate the provision of such advanced video services in the BellSouth in-region territory, AT&T/BellSouth will continue to deploy fiber-based facilities and intends to have the capability to reach at least 1.5 million homes in the BellSouth in-region territory by the end of 2007. AT&T/BellSouth agrees to provide a written report to the Commission by December 31, 2007, describing progress made in obtaining necessary authorizations to roll-out, and the actual roll-out of, such advanced video services in the BellSouth in-region territory.

Public Safety, Disaster Recovery

1. By June 1, 2007, AT&T will complete the steps necessary to allow it to make its disaster recovery capabilities available to facilitate restoration of service in BellSouth's in-region territory in the event of an extended service outage caused by a hurricane or other disaster.

2. In order to further promote public safety, within thirty days of the Merger Closing Date, AT&T/BellSouth will donate \$1 million to a section 501(c)(3) foundation or public entities for the purpose of promoting public safety.

³ For purposes of this commitment, a low income living unit shall mean a living unit in AT&T/BellSouth's in-region territory with an average annual income of less than \$35,000, determined consistent with Census Bureau data, *see* California Public Utilities Code section 5890(j)(2) (as added by AB 2987) (defining low income households as those with annual incomes below \$35,000), and a rural area shall consist of the zones in AT&T/BellSouth's in-region territory with the highest deaveraged UNE loop rates as established by the state commission consistent with the procedures set forth in section 51.507 of the Commission's rules. 47 C.F.R. § 51.507.

Service to Customers with Disabilities

AT&T/BellSouth has a long and distinguished history of serving customers with disabilities. AT&T/BellSouth commits to provide the Commission, within 12 months of the Merger Closing Date, a report describing its efforts to provide high quality service to customers with disabilities.

UNEs

1. The AT&T and BellSouth ILECs shall continue to offer and shall not seek any increase in state-approved rates for UNEs or collocation that are in effect as of the Merger Closing Date. For purposes of this commitment, an increase includes an increased existing surcharge or a new surcharge unless such new or increased surcharge is authorized by (i) the applicable interconnection agreement or tariff, as applicable, and (ii) by the relevant state commission. This commitment shall not limit the ability of the AT&T and BellSouth ILECs and any other telecommunications carrier to agree voluntarily to any different UNE or collocation rates.
2. AT&T/BellSouth shall recalculate its wire center calculations for the number of business lines and fiber-based collocations and, for those that no longer meet the non-impairment thresholds established in 47 CFR §§ 51.319(a) and (e), provide appropriate loop and transport access. In identifying wire centers in which there is no impairment pursuant to 47 CFR §§ 51.319(a) and (e), the merged entity shall exclude the following: (i) fiber-based collocation arrangements established by AT&T or its affiliates; (ii) entities that do not operate (*i.e.*, own or manage the optronics on the fiber) their own fiber into and out of their own collocation arrangement but merely cross-connect to fiber-based collocation arrangements; and (iii) special access lines obtained by AT&T from BellSouth as of the day before the Merger Closing Date.
3. AT&T/BellSouth shall cease all ongoing or threatened audits of compliance with the Commission's EELs eligibility criteria (as set forth in the *Supplemental Order Clarification's* significant local use requirement and related safe harbors, and the *Triennial Review Order's* high capacity EEL eligibility criteria), and shall not initiate any new EELs audits.

Reducing Transaction Costs Associated with Interconnection Agreements

1. The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.
2. The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.
3. The AT&T/BellSouth ILECs shall allow a requesting telecommunications carrier to use its pre-existing interconnection agreement as the starting point for negotiating a new agreement.

4. The AT&T/BellSouth ILECs shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years, subject to amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's "default" provisions.

Special Access

Each of the following special access commitments shall remain in effect until 48 months from the Merger Closing Date.

1. AT&T/BellSouth affiliates that meet the definition of a Bell operating company in section 3(4)(A) of the Act ("AT&T/BellSouth BOCs")⁴ will implement, in the AT&T and BellSouth Service Areas,⁵ the Service Quality Measurement Plan for Interstate Special Access Services ("the Plan"), similar to that set forth in the SBC/AT&T Merger Conditions, as described herein and in Attachment A to this Appendix F. The AT&T/BellSouth BOCs shall provide the Commission with performance measurement results on a quarterly basis, which shall consist of data collected according to the performance measurements listed therein. Such reports shall be provided in an Excel spreadsheet format and shall be designed to demonstrate the AT&T/BellSouth BOCs' monthly performance in delivering interstate special access services within each of the states in the AT&T and BellSouth Service Areas. These data shall be reported on an aggregated basis for interstate special access services delivered to (i) AT&T and BellSouth section 272(a) affiliates, (ii) their BOC and other affiliates, and (iii) non-affiliates.⁶ The AT&T/BellSouth BOCs shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter. The AT&T/BellSouth BOCs shall implement the Plan for the first full quarter following the Merger Closing Date. This commitment shall terminate on the earlier of (i) 48 months and 45 days after the beginning of the first full quarter following the Merger Closing Date (that is, when AT&T/BellSouth files its 16th quarterly report); or (ii) the effective date of a Commission order adopting performance measurement requirements for interstate special access services.

2. AT&T/BellSouth shall not increase the rates paid by existing customers (as of the Merger Closing Date) of DS1 and DS3 local private line services that it provides in the AT&T/BellSouth in-region territory pursuant to, or referenced in, TCG FCC Tariff No. 2 above their level as of the Merger Closing Date.

3. AT&T/BellSouth will not provide special access offerings to its wireline affiliates that are not available to other similarly situated special access customers on the same terms and conditions.

4. To ensure that AT&T/BellSouth may not provide special access offerings to its affiliates that are not available to other special access customers, before AT&T/BellSouth provides a new or modified contract tariffed service under section 69.727(a) of the Commission's rules to its own section 272(a)

⁴ For purposes of clarity, the special access commitments set forth herein do not apply to AT&T Advanced Solutions, Inc. and the Ameritech Advanced Data Services Companies, doing business collectively as "ASI."

⁵ For purposes of this commitment, "AT&T and BellSouth Service Areas" means the areas within AT&T/BellSouth's in-region territory in which the AT&T and BellSouth ILECs are Bell operating companies as defined in 47 U.S.C. § 153(4)(A).

⁶ BOC data shall not include retail data.

affiliate(s), it will certify to the Commission that it provides service pursuant to that contract tariff to an unaffiliated customer other than Verizon Communications Inc., or its wireline affiliates.

AT&T/BellSouth also will not unreasonably discriminate in favor of its affiliates in establishing the terms and conditions for grooming special access facilities.⁷

5. No AT&T/BellSouth ILEC may increase the rates in its interstate tariffs, including contract tariffs, for special access services that it provides in the AT&T/BellSouth in-region territory, as set forth in tariffs on file at the Commission on the Merger Closing Date, and as set forth in tariffs amended subsequently in order to comply with the provisions of these commitments.

6. In areas within the AT&T/BellSouth in-region territory where an AT&T/BellSouth ILEC has obtained Phase II pricing flexibility for price cap services ("Phase II areas"), such ILEC will offer DS1 and DS3 channel termination services, DS1 and DS3 mileage services, and Ethernet services,⁸ that currently are offered pursuant to the Phase II Pricing Flexibility Provisions of its special access tariffs,⁹ at rates that are no higher than, and on the same terms and conditions as, its tariffed rates, terms, and conditions as of the Merger Closing Date for such services in areas within its in-region territory where it has not obtained Phase II pricing flexibility. In Phase II areas, AT&T/BellSouth also will reduce by 15% the rates in its interstate tariffs as of the Merger Closing Date for Ethernet services that are not at that time subject to price cap regulation. The foregoing commitments shall not apply to DS1, DS3, or Ethernet services provided by an AT&T/BellSouth ILEC to any other price cap ILEC, including any affiliate of such other price cap ILEC,¹⁰ unless such other price cap ILEC offers DS1 and DS3 channel termination and mileage services, and price cap Ethernet services in all areas in which it has obtained Phase II pricing flexibility relief for such services (hereinafter "Reciprocal Price Cap Services") at rates, and on the terms and conditions, applicable to such services in areas in which it has not obtained Phase II pricing flexibility for such services, nor shall AT&T/BellSouth provide the aforementioned 15% discount to such price cap ILEC or affiliate thereof unless such ILEC makes generally available a reciprocal discount for any Ethernet service it offers outside of price cap regulation (hereinafter "Reciprocal Non-Price Cap Services"). Within 14 days of the Merger Closing Date, AT&T/BellSouth will provide notice of this commitment to each price cap ILEC that purchases, or that has an affiliate that purchases, services subject to this commitment from an AT&T/BellSouth ILEC. If within 30 days thereafter, such price cap ILEC does not: (i) affirmatively inform AT&T/BellSouth and the Commission of its intent to sell Reciprocal Price Cap Services in areas where it has received Phase II pricing flexibility for such services at the rates, terms, and conditions that apply in areas where it has

⁷ Neither this merger commitment nor any other merger commitment herein shall be construed to require AT&T/BellSouth to provide any service through a separate affiliate if AT&T/BellSouth is not otherwise required by law to establish or maintain such separate affiliate.

⁸ The Ethernet services subject to this commitment are AT&T's interstate OPT-E-MAN, GigaMAN and DecaMAN services and BellSouth's interstate Metro Ethernet Service.

⁹ The Phase II Pricing Flexibility Provisions for DS1 and DS3 services are those set forth in Ameritech Tariff FCC No. 2, Section 21; Pacific Bell Tariff FCC No. 1, Section 31; Nevada Bell Tariff FCC No. 1, Section 22; Southwestern Bell Telephone Company Tariff FCC No. 73, Section 39; Southern New England Telephone Tariff FCC No. 39, Section 24; and BellSouth Telecommunications Tariff FCC No. 1, Section 23.

¹⁰ For purposes of this commitment, the term "price cap ILEC" refers to an incumbent local exchange carrier that is subject to price cap regulation and all of its affiliates that are subject to price cap regulation. The term "affiliate" means an affiliate as defined in 47 U.S.C. § 153(1) and is not limited to affiliates that are subject to price cap regulation.

not received such flexibility, and to provide a 15% discount on Reciprocal Non-Price Cap Services; and (ii) file tariff revisions that would implement such changes within 90 days of the Merger Closing Date (a "Non-Reciprocating Carrier"), the AT&T/BellSouth ILECs shall be deemed by the FCC to have substantial cause to make any necessary revisions to the tariffs under which they provide the services subject to this commitment to such Non-Reciprocating Carrier, including any affiliates, to prevent or offset any change in the effective rate charged such entities for such services. The AT&T/BellSouth ILECs will file all tariff revisions necessary to effectuate this commitment, including any provisions addressing Non-Reciprocating Carriers and their affiliates, within 90 days from the Merger Closing Date.

7. AT&T/BellSouth will not oppose any request by a purchaser of interstate special access services for mediation by Commission staff of disputes relating to AT&T/BellSouth's compliance with the rates, terms, and conditions set forth in its interstate special access tariffs and pricing flexibility contracts or to the lawfulness of the rates, terms, and conditions in such tariffs and contracts, nor shall AT&T/BellSouth oppose any request that such disputes be accepted by the Commission onto the Accelerated Docket.

8. The AT&T/BellSouth ILECs will not include in any pricing flexibility contract or tariff filed with the Commission after the Merger Closing Date access service ratio terms which limit the extent to which customers may obtain transmission services as UNEs, rather than special access services.

9. Within 60 days after the Merger Closing Date, the AT&T/BellSouth ILECs will file one or more interstate tariffs that make available to customers of DS1, DS3, and Ethernet service reasonable volume and term discounts without minimum annual revenue commitments (MARCs) or growth discounts. To the extent an AT&T/BellSouth ILEC files an interstate tariff for DS1, DS3, or Ethernet services with a varying MARC, it will at the same time file an interstate tariff for such services with a fixed MARC. For purposes of these commitments, a MARC is a requirement that the customer maintain a minimum specified level of spending for specified services per year.

10. If, during the course of any negotiation for an interstate pricing flexibility contract, AT&T/BellSouth offers a proposal that includes a MARC, AT&T/BellSouth will offer an alternative proposal that gives the customer the option of obtaining a volume and/or term discount(s) without a MARC. If, during the course of any negotiation for an interstate pricing flexibility contract, AT&T/BellSouth offers a proposal that includes a MARC that varies over the life of the contract, AT&T/BellSouth will offer an alternative proposal that includes a fixed MARC.

11. Within 14 days of the Merger Closing Date, the AT&T/BellSouth ILECs will give notice to customers of AT&T/BellSouth with interstate pricing flexibility contracts that provide for a MARC that varies over the life of the contract that, within 45 days of such notice, customers may elect to freeze, for the remaining term of such pricing flexibility contract, the MARC in effect as of the Merger Closing Date, provided that the customer also freezes, for the remaining term of such pricing flexibility contract, the contract discount rate (or specified rate if the contract sets forth specific rates rather than discounts off of referenced tariffed rates) in effect as of the Merger Closing Date.

Transit Service

The AT&T and BellSouth ILECs will not increase the rates paid by existing customers for their existing tandem transit service arrangements that the AT&T and BellSouth ILECs provide in the AT&T/BellSouth in-region territory.¹¹

ADSL Service¹²

1. Within twelve months of the Merger Closing Date, AT&T/BellSouth will deploy and offer within the BellSouth in-region territory ADSL service to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service. AT&T/BellSouth will continue to offer this service in each state for thirty months after the "Implementation Date" in that state. For purposes of this commitment, the "Implementation Date" for a state shall be the date on which AT&T/BellSouth can offer this service to eighty percent of the ADSL-capable premises in BellSouth's in-region territory in that state.¹³ Within twenty days after meeting the Implementation Date in a state, AT&T/BellSouth will file a letter with the Commission certifying to that effect. In all events, this commitment will terminate no later than forty-two months after the Merger Closing Date.
2. AT&T/BellSouth will extend until thirty months after the Merger Closing Date the availability within AT&T's in-region territory of ADSL service, as described in the ADSL Service Merger Condition, set forth in Appendix F of the *SBC/AT&T Merger Order* (FCC 05-183).
3. Within twelve months of the Merger Closing Date, AT&T/BellSouth will make available in its in-region territory an ADSL service capable of speeds up to 768 Kbps to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service ("Stand Alone 768 Kbps service"). AT&T/BellSouth will continue to offer the 768 Kbps service in a state for thirty months after the "Stand Alone 768 Kbps Implementation Date" for that state. For purposes of this commitment, the "Stand Alone 768 Kbps Implementation Date" for a state shall be the date on which AT&T/BellSouth can offer the Stand Alone 768 Kbps service to eighty percent of the ADSL-capable premises in AT&T/BellSouth's in-region territory in that state. The Stand Alone 768 Kbps service will be offered at a rate of not more than \$19.95 per month (exclusive of regulatory fees and taxes). AT&T/BellSouth may make available such services at other speeds at prices that are competitive with the broadband market taken as a whole.

ADSL Transmission Service

AT&T/BellSouth will offer to Internet service providers, for their provision of broadband Internet access service to ADSL-capable retail customer premises, ADSL transmission service in the combined

¹¹ Tandem transit service means tandem-switched transport service provided to an originating carrier in order to indirectly send intraLATA traffic subject to § 251(b)(5) of the Communications Act of 1934, as amended, to a terminating carrier, and includes tandem switching functionality and tandem switched transport functionality between an AT&T/BellSouth tandem switch location and the terminating carrier.

¹² The commitments set forth under the heading "ADSL Service" are, by their terms, available to retail customers only. Wholesale commitments are addressed separately under the heading "ADSL Transmission Service."

¹³ After meeting the implementation date in each state, AT&T/BellSouth will continue deployment so that it can offer the service to all ADSL-capable premises in its in-region territory within twelve months of the Merger Closing Date.

AT&T/BellSouth territory that is functionally the same as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date.¹⁴ Such wholesale offering will be at a price not greater than the retail price in a state for ADSL service that is separately purchased by customers who also subscribe to AT&T/BellSouth local telephone service.

Net Neutrality

1. Effective on the Merger Closing Date, and continuing for 30 months thereafter, AT&T/BellSouth will conduct business in a manner that comports with the principles set forth in the Commission's Policy Statement, issued September 23, 2005 (FCC 05-151).

2. AT&T/BellSouth also commits that it will maintain a neutral network and neutral routing in its wireline broadband Internet access service.¹⁵ This commitment shall be satisfied by AT&T/BellSouth's agreement not to provide or to sell to Internet content, application, or service providers, including those affiliated with AT&T/BellSouth, any service that privileges, degrades or prioritizes any packet transmitted over AT&T/BellSouth's wireline broadband Internet access service based on its source, ownership or destination.

This commitment shall apply to AT&T/BellSouth's wireline broadband Internet access service from the network side of the customer premise equipment up to and including the Internet Exchange Point closest to the customer's premise, defined as the point of interconnection that is logically, temporally or physically closest to the customer's premise where public or private Internet backbone networks freely exchange Internet packets.

This commitment does not apply to AT&T/BellSouth's enterprise managed IP services, defined as services available only to enterprise customers¹⁶ that are separate services from, and can be purchased without, AT&T/BellSouth's wireline broadband Internet access service, including, but not limited to, virtual private network (VPN) services provided to enterprise customers. This commitment also does not apply to AT&T/BellSouth's Internet Protocol television (IPTV) service. These exclusions shall not result in the privileging, degradation, or prioritization of packets transmitted or received by AT&T/BellSouth's non-enterprise customers' wireline broadband Internet access service from the network side of the customer premise equipment up to and including the Internet Exchange Point closest to the customer's premise, as defined above.

¹⁴ An ADSL transmission service shall be considered "functionally the same" as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date if the ADSL transmission service relies on ATM transport from the DSLAM (or equivalent device) to the interface with the Internet service provider, and provides a maximum asymmetrical downstream speed of 1.5Mbps or 3.0Mbps, or a maximum symmetrical upstream/downstream speed of 384Kbps or 416Kbps, where each respective speed is available (the "Broadband ADSL Transmission Service"). Nothing in this commitment shall require AT&T/BellSouth to serve any geographic areas it currently does not serve with Broadband ADSL Transmission Service or to provide Internet service providers with broadband Internet access transmission technology that was not offered by AT&T to such providers in its in-region territory as of the Merger Closing Date.

¹⁵ For purposes of this commitment, AT&T/BellSouth's wireline broadband Internet access service and its Wi-Max fixed wireless broadband Internet access service are, collectively, AT&T/BellSouth's "wireline broadband Internet access service."

¹⁶ "Enterprise customers" refers to that class of customer identified as enterprise customers on AT&T's website (<http://www.att.com>) as of December 28, 2006.

This commitment shall sunset on the earlier of (1) two years from the Merger Closing Date, or (2) the effective date of any legislation enacted by Congress subsequent to the Merger Closing Date that substantially addresses "network neutrality" obligations of broadband Internet access providers, including, but not limited to, any legislation that substantially addresses the privileging, degradation, or prioritization of broadband Internet access traffic.

Internet Backbone

1. For a period of three years after the Merger Closing Date, AT&T/BellSouth will maintain at least as many discrete settlement-free peering arrangements for Internet backbone services with domestic operating entities within the United States as they did on the Merger Closing Date, provided that the number of settlement-free peering arrangements that AT&T/BellSouth is required to maintain hereunder shall be adjusted downward to account for any mergers, acquisitions, or bankruptcies by existing peering entities or the voluntary election by a peering entity to discontinue its peering arrangement. If on the Merger Closing Date, AT&T and BellSouth both maintain a settlement free peering arrangement for Internet backbone services with the same entity (or an affiliate thereof), the separate arrangements shall count as one settlement-free peering arrangement for purposes of determining the number of discrete peering entities with whom AT&T/BellSouth must peer pursuant to this commitment. AT&T/BellSouth may waive terms of its published peering policy to the extent necessary to maintain the number of peering arrangements required by this commitment. Notwithstanding the above, if within three years after the Merger Closing Date, one of the ten largest entities with which AT&T/BellSouth engages in settlement free peering for Internet backbone services (as measured by traffic volume delivered to AT&T/BellSouth's backbone network facilities by such entity) terminates its peering arrangement with AT&T/BellSouth for any reason (including bankruptcy, acquisition, or merger), AT&T/BellSouth will replace that peering arrangement with another settlement free peering arrangement and shall not adjust its total number of settlement free peers downward as a result.

2. Within thirty days after the Merger Closing Date, and continuing for three years thereafter, AT&T/BellSouth will post its peering policy on a publicly accessible website. During this three-year period, AT&T/BellSouth will post any revisions to its peering policy on a timely basis as they occur.

Forbearance

1. AT&T/BellSouth will not seek or give effect to a ruling, including through a forbearance petition under section 10 of the Communications Act (the "Act") 47 U.S.C. 160, or any other petition, altering the status of any facility being currently offered as a loop or transport UNE under section 251(c)(3) of the Act.

2. AT&T/BellSouth will not seek or give effect to any future grant of forbearance that diminishes or supersedes the merged entity's obligations or responsibilities under these merger commitments during the period in which those obligations are in effect.

Wireless

1. AT&T/BellSouth shall assign and/or transfer to an unaffiliated third party all of the 2.5 GHz spectrum (broadband radio service (BRS)/educational broadband service (EBS)) currently licensed to or leased by BellSouth within one year of the Merger Closing Date.

2. By July 21, 2010, AT&T/BellSouth agrees to: (1) offer service in the 2.3 GHz band to 25% of the population in the service area of AT&T/BellSouth's wireless communications services (WCS) licenses,

for mobile or fixed point-to-multi-point services, or (2) construct at least five permanent links per one million people in the service area of AT&T/BellSouth's WCS licenses, for fixed point-to-point services. In the event AT&T/BellSouth fails to meet either of these service requirements, AT&T/BellSouth will forfeit the unconstructed portion of the individual WCS licenses for which it did not meet either of these service requirements as of July 21, 2010; provided, however, that in the event the Commission extends the July 21, 2010, buildout date for 2.3GHz service for the WCS industry at large ("Extended Date"), the July 21, 2010 buildout date specified herein shall be modified to conform to the Extended Date. The wireless commitments set forth above do not apply to any 2.3 GHz wireless spectrum held by AT&T/BellSouth in the state of Alaska.

Divestiture of Facilities

Within twelve months of the Merger Closing Date, AT&T/BellSouth will sell to an unaffiliated third party(ies) an indefeasible right of use ("IRU") to fiber strands within the existing "Lateral Connections," as that term is defined in the *SBC/AT&T Consent Decree*,¹⁷ to the buildings listed in Attachment B to this Appendix F ("BellSouth Divestiture Assets"). These divestitures will be effected in a manner consistent with the divestiture framework agreed to in the *SBC/AT&T Consent Decree*, provided that such divestitures will be subject to approval by the FCC, rather than the Department of Justice.

Tunney Act

AT&T is a party to a Consent Decree entered into following the merger of SBC and AT&T (the "Consent Decree"). The Consent Decree documents the terms under which AT&T agreed to divest special access facilities serving 383 buildings within the former SBC in-region ILEC territory (the "SBC Divestiture Assets"). In its Order approving the AT&T/SBC merger, the Commission also required the divestiture of these same facilities on the terms and conditions contained in the Consent Decree. The Consent Decree is currently under review pursuant to the Tunney Act in the U.S. District Court for the District of Columbia (the "Court") in *U.S. v. SBC Communications, Inc. and AT&T Corp.*, Civil Action No. 1:05CV02102 (EGS) (D.D.C.), where the Court is reviewing the adequacy of the remedy contained in the Consent Decree to address the competitive concerns described in the Complaint filed by the Department of Justice (DOJ).

If it is found in a final, non-appealable order, that the remedy in the Consent Decree is not adequate to address the concerns raised in the Complaint and AT&T and the DOJ agree to a modification of the Consent Decree (the "Modified Consent Decree"), then AT&T agrees that (1) AT&T/BellSouth will conform its divestiture of the BellSouth Divestiture Assets to the terms of the Modified Consent Decree; and (2) AT&T/BellSouth will negotiate in good faith with the Commission to determine whether the conditions imposed on AT&T/BellSouth in the Commission order approving the merger of AT&T and BellSouth satisfies, with respect to the BellSouth territory, the concerns addressed in the Modified Consent Decree.

Certification

AT&T/BellSouth shall annually file a declaration by an officer of the corporation attesting that AT&T/BellSouth has substantially complied with the terms of these commitments in all material

¹⁷ See *United States v. SBC Communications, Inc.*, Civil Action No. 1:05CV02102, Final Judgment (D.D.C. filed Oct. 27, 2005).

respects. The first declaration shall be filed 45 days following the one-year anniversary of the Merger Closing Date, and the second, third, and fourth declarations shall be filed one, two, and three years thereafter, respectively.

**Conditions
ATTACHMENT A**

**Service Quality Measurement Plan
For Interstate Special Access**

Contents

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Section 1: Ordering**FOCT: Firm Order Confirmation (FOC) Timeliness****Definition**

Firm Order Confirmation (FOC) Timeliness measures the percentage of FOCs returned within the Company-specified standard interval.

Exclusions

- Service requests identified as “Projects” or “ICBs”
- Service requests cancelled by the originator
- Weekends and designated holidays of the service center
- Unsolicited FOCs
- Administrative or test service requests
- Service requests that indicate that no confirmation/response should be sent
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

Counts are based on the first instance of a FOC being sent in response to an ASR. Activity starting on a weekend or holiday will reflect a start date of the next business day. Activity ending on a weekend or holiday will be calculated with an end date of the last previous business day. Requests received after the company’s stated cutoff time will be counted as a “zero” day interval if the FOC is sent by close of business on the next business day. The standard interval will be that which is specified in the company-specific ordering guide.

Calculation

Firm Order Confirmation (FOC) Interval = (a - b)

- a = Date and time FOC is returned
- b = Date and time valid access service request is received

Percent within Standard Interval = (c / d) X 100

- c = Number of service requests confirmed within the designated interval
- d = Total number of service requests confirmed in the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation (Percent FOCs returned within Standard Interval)

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

Section 2: Provisioning**PIAM: Percent Installation Appointments Met****Definition**

Percent Installation Appointments Met measures the percentage of installations completed on or before the confirmed due date.

Exclusions

- Orders issued and subsequently cancelled
- Orders associated with internal or administrative (including test) activities
- Disconnect Orders
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

This measurement is calculated by dividing the number of service orders completed during the reporting period, on or before the confirmed due date, by the total number of orders completed during the same reporting period. Installation appointments missed because of customer caused reasons shall be counted as met and included in both the numerator and denominator. Where there are multiple missed appointment codes, each RBOC will determine whether an order is considered missed.

Calculation

Percent Installation Appointments Met = $(a / b) \times 100$

- a = Number of orders completed on or before the RBOC confirmed due date during the reporting period
- b = Total number of orders where completion has been confirmed during the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

NITR: New Installation Trouble Report Rate**Definition**

New Installation Trouble Report Rate measures the percentage of circuits or orders where a trouble was found in RBOC facilities or equipment within thirty days of order completion.

Exclusions

- Trouble tickets issued and subsequently cancelled
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- RBOC troubles associated with administrative service
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions defined by each RBOC to reflect system and operational differences
- Subsequent trouble reports

Business Rules

Only the first customer direct trouble report received within thirty calendar days of a completed service order is counted in this measure. Only customer direct trouble reports that required the RBOC to repair a portion of the RBOC network will be counted in this measure. The RBOC completion date is when the RBOC completes installation of the circuit or order.

Calculation

Trouble Report Rate within 30 Calendar Days of Installation = $(a / b) \times 100$

- a = Count of circuits/orders with trouble reports within 30 calendar days of installation
- b = Total number of circuits/orders installed in the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

Section 3: Maintenance & Repair**CTRR: Failure Rate/Trouble Report Rate****Definition**

The percentage of initial and repeated circuit-specific trouble reports completed per 100 in-service circuits for the reporting period.

Exclusions

- Trouble reports issued and subsequently cancelled
- Employee initiated trouble reports
- Trouble reports/circuits associated with internal or administrative activities
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- Tie Circuits
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

Only customer direct trouble reports that require the RBOC to repair a portion of the RBOC network will be counted in this report. The trouble report rate is computed by dividing the number of completed trouble reports handled during the reporting period by the total number of in-service circuits for the same period.

Calculation

Percent Trouble Report Rate = $(a / b) \times 100$

- a = Number of completed circuit-specific trouble reports received during the reporting period
- b = Total number of in-service circuits during the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

MAD: Average Repair Interval/Mean Time to Restore**Definition**

The Average Repair Interval/Mean Time to Restore is the average time between the receipt of a customer trouble report and the time the service is restored. The average outage duration is only calculated for completed circuit-specific trouble reports.

Exclusions

- Trouble reports issued and subsequently cancelled
- Employee initiated trouble reports
- Trouble reports associated with internal or administrative activities
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- Tie Circuits
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules

Only customer direct trouble reports that require the RBOC to repair a portion of the RBOC network will be counted in this measure. The average outage duration is calculated for each restored circuit with a trouble report. The start time begins with the receipt of the trouble report and ends when the service is restored. This is reported in a manner such that customer hold time or delay maintenance time resulting from verifiable situations of no access to the end user premise, other CLEC/IXC or RBOC retail customer caused delays, such as holding the ticket open for monitoring, is deducted from the total resolution interval ("stop clock" basis).

Calculation

Repair Interval = (a – b)

- a = Date and time trouble report was restored
- b = Date and time trouble report was received

Average Repair Interval = (c / d)

- c = Total of all repair intervals (in hours/days) for the reporting period
- d = Total number of trouble reports closed during the reporting period

Report Structure

- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
 - RBOC 272 Affiliates Aggregate

Geographic Scope

- State

SQM Disaggregation

- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

GLOSSARY

Access Service Request (ASR)	A request to the RBOC to order new access service, or request a change to existing service, which provides access to the local exchange company's network under terms specified in the local exchange company's special or switched access tariffs.
RBOC 272 Affiliates Aggregate	RBOC Affiliate(s) authorized to provide long distance service as a result of the Section 271 approval process.
RBOC Affiliates Aggregate	RBOC Telecommunications and all RBOC Affiliates (including the 272 Affiliate). Post sunset, comparable line of business (e.g., 272 line of business) will be included in this category.
Business Days	Monday thru Friday (8AM to 5PM) excluding holidays
CPE	Customer Provided or Premises Equipment
Customer Not Ready (CNR)	A verifiable situation beyond the normal control of the RBOC that prevents the RBOC from completing an order, including the following: CLEC or IXC is not ready to receive service; end user is not ready to receive service; connecting company or CPE supplier is not ready.
Firm Order Confirmation (FOC)	The notice returned from the RBOC, in response to an Access Service Request from a CLEC, IXC or affiliate, that confirms receipt of the request and creation of a service order with an assigned due date.
Unsolicited FOC	An Unsolicited FOC is a supplemental FOC issued by the RBOC to change the due date or for other reasons, e.g., request for a second copy from the CLEC/IXC, although no change to the ASR was requested by the CLEC or IXC.
Project or ICB	Service requests that exceed the line size and/or level of complexity that would allow the use of standard ordering and provisioning interval and processes. Service requests requiring special handling.
Repeat Trouble	Trouble that reoccurs on the same telephone number/circuit ID within 30 calendar days
Service Orders	Refers to all orders for new or additional lines/circuits. For change order types, additional lines/circuits consist of all C order types with "I" and "T" action coded line/circuit USOCs that represent new or additional lines/circuits, including conversions for RBOC to Carrier and Carrier to Carrier.

**Conditions
ATTACHMENT B**

Building List

Metro Area	CLLI	Address	City	State	Zip Code
Atlanta	ALPRGAVP	5965 CABOT PKWY	ALPHARETTA	GA	30005
Atlanta	ATLNGABI	2751 BUFORD HWY NE	ATLANTA	GA	30324
Atlanta	CHMBGAJG	2013 FLIGHTWAY DR	CHAMBLEE	GA	30341
Atlanta	NRCRGAER	6675 JONES MILL CT	NORCROSS	GA	30092
Atlanta	NRCRGAJJ	4725 PEACHTREE CORNERS CIR	NORCROSS	GA	30092
Atlanta	NRCRGANX	3795 DATA DR NW	NORCROSS	GA	30092
Atlanta	NRCRGARC	335 RESEARCH CT	NORCROSS	GA	30092
Birmingham	BRHMALKU	101 LEAF LAKE PKWY	BIRMINGHAM	AL	35211
Charlotte	CHRMNCXI	2605 WATER RIDGE PKWY	CHARLOTTE	NC	28217
Chattanooga	CHTGTNAC	537 MARKET ST	CHATTANOOGA	TN	37402
Jacksonville	JCVNFLHK	10201 CENTURION PKWY N	JACKSONVILLE	FL	32256
Knoxville	KNVLTNHB	8057 RAY MEARS BLVD	KNOXVILLE	TN	37919
Knoxville	KNVNTN82	2160 LAKESIDE CENTER WAY	KNOXVILLE	TN	37922
Miami	BCRTFLAU	851 NW BROKEN SOUND PKWY	BOCA RATON	FL	33487
Miami	BCRTFLCM	501 E CAMINO REAL	BOCA RATON	FL	33432
Miami	DLBHFLDU	360 N CONGRESS AVE	DELRAY BEACH	FL	33445
Miami	JPTRFLAC	100 MARQUETTE DR	JUPITER	FL	33458
Miami	JPTRFLBC	1001 N USHWY 1	JUPITER	FL	33477
Miami	PLNBFLAZ	1601 SW 80TH TER	PLANTATION	FL	33324
Miami	PLNBFLCQ	1800 NW 69TH AVE	PLANTATION	FL	33313
Miami	SUNRFLCF	720 INTERNATIONAL PKWY	SUNRISE	FL	33325
Nashville	BRWDTNEV	210 WESTWOOD PL	BRENTWOOD	TN	37027
Nashville	NSVLTNIH	1215 21ST AVE S	NASHVILLE	TN	37212
Nashville	NSVLTNWL	28 OPRYLAND DR	NASHVILLE	TN	37204
Nashville	NSVNTNFO	252 OPRY MILLS DR	NASHVILLE	TN	37214
Nashville	NSVPTNIJ	332 OPRY MILLS DR	NASHVILLE	TN	37214
Nashville	NSVPTN98	427 OPRY MILLS DR	NASHVILLE	TN	37214
Nashville	NSVPTNJX	540 OPRY MILLS DR	NASHVILLE	TN	37214
Miami	LDHLFLAC	4300 N UNIVERSITY DR	LAUDERHILL	FL	33351
Miami	SUNRFLBD	440 SAWGRASS CORP. PARKWAY	SUNRISE	FL	33325
Orlando	ORLFFLYL	8350 PARKLINE BLVD	ORLANDO	FL	32809

EXHIBIT B

ITCDELTA COM COMMUNICATIONS, INC., d/b/a ITCDELTA COM (DeltaCom), Petitioner
IN RE: PETITION FOR APPROVAL OF ELECTION TO ADOPT TERMS AND
CONDITIONS OF PREVIOUSLY APPROVED INTERCONNECTION AGREEMENT
PURSUANT TO 47 U.S.C. § 252(i) AND THE FCC'S BELL ATLANTIC/GTE
MERGER CONDITIONS.

INFORMAL DOCKET U-4320

Alabama Public Service Commission

2001 Ala. PUC LEXIS 204

May 27, 2001

PANEL: [*1] Jim Sullivan, President; Jan Cook, Commissioner; George C. Wallace, Jr., Commissioner

OPINION: ORDER

BY THE COMMISSION:

By filing received May 7, 2001, ITCDeltaCom Communications, Inc., d/b/a ITCDeltaCom (DeltaCom) seeks formal approval of its election to adopt the terms and conditions of the GTE South, Inc. (GTE) and Time Warner Telecom (Time Warner) Interconnection, Resale and Unbundling Agreement (the GTE/Time Warner Agreement) filed with and approved by the North Carolina Utilities Commission in Docket No. P-19, Sub 381. DeltaCom's request is made pursuant to the terms of 47 U.S.C. § 252(i) and the terms and conditions established by the Federal Communications Commission (FCC) in its order approving the merger between GTE Corporation (GTE) and Bell Atlantic Corporation (Bell Atlantic) (the FCC's Bell Atlantic/GTE Merger Order).

DeltaCom represents that the FCC's Bell Atlantic/GTE Merger Order requires that Verizon Communications, Inc. (Verizon), the named entity which resulted from the merger of GTE and Bell Atlantic, must make available to any requesting telecommunications carrier in the Bell Atlantic/GTE service areas any Bell Atlantic/GTE state [*2] interconnection agreement that was voluntarily negotiated by a Bell Atlantic/GTE incumbent local exchange carrier (LEC) prior to the merger closing date. Such agreements must also be subject to 47 U.S.C. § 251(c) and meet the conditions established at P39 of the FCC's Bell Atlantic/GTE Merger Order in order to be available to requesting carriers. DeltaCom represents that the GTE/Time Warner Agreement meets the aforementioned criteria since it was executed on June 26, 2000, and was voluntarily negotiated by a GTE incumbent LEC in North Carolina.

We have reviewed the request set forth in DeltaCom's petition and find that formal approval of DeltaCom's election to adopt the terms and conditions of the aforementioned GTE/Time Warner Agreement is consistent with the public interest, convenience and necessity. The terms and conditions established by the FCC in its Bell Atlantic/GTE Merger Order indeed allow a carrier operating in any Bell Atlantic/GTE state to opt-in to an entire interconnection agreement in any other Bell Atlantic/GTE state so long as the agreement in question was voluntarily negotiated and meets the timing and location requirements established [*3] by the FCC. It appears that the North Carolina agreement between GTE and Time Warner submitted by DeltaCom with its Petition meets the requirements established by the FCC in its Bell Atlantic/GTE Merger Order.

DeltaCom is also correct in its assessment that the provisions of 47 U.S.C. § 252(i) allow carriers wide latitude to adopt the terms and conditions of existing agreements that are approved pursuant to the provisions of 47 U.S.C. § 252. There are in fact few limitations on the ability of a carrier to invoke the provisions of 47 U.S.C. § 252(i). The Federal Communications Commission (FCC) did, however, recently establish a limitation on § 252(i) opt-ins that must be considered in this instance.

In its April 27, 2001, *ISP Remand Order*, the FCC stated that upon the publication of said order in the Federal Register, carriers such as DeltaCom may no longer invoke 47 U.S.C. § 252(i) to opt-in to an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic. The FCC's *ISP Remand Order* was [*4] in fact published in the Federal Register on May 15, 2001.

In the present case, it appears that DeltaCom's election to invoke the provisions of 47 U.S.C. 252(i) to opt-in to the GTE/Time Warner Agreement from North Carolina occurred when DeltaCom filed the instant Petition with the Commission on May 7, 2001. DeltaCom's request was unanimously approved by the Commission at its May 14, 2001, public meeting. The fact that this Order is issued after the May 15, 2001, publication of the FCC's *ISP Remand Order* in the Federal Register is of little significance due to the fact that DeltaCom invoked its 47 U.S.C. 252(i) opt-in rights and had that election verbally approved by this Commission before the deadline established by the FCC. DeltaCom also notified GTE (Verizon) of its election to invoke 47 U.S.C. § 252(i) with regard to the aforementioned agreement prior to the May 15, 2001 publication of the FCC's *ISP Remand Order*. It thus appears that DeltaCom's election to invoke 47 U.S.C. § 252(i) to opt-in to the GTE/Time Warner agreement extends [*5] to all provisions of that agreement, including those provisions addressing reciprocal compensation for ISP-bound traffic.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That ITCDeltaCom Communications, Inc., d/b/a ITCDeltaCom's request for approval to adopt the provisions of the interconnection agreement between GTE South, Incorporated and Time Warner Telecom as approved by the North Carolina Utilities Commission In Docket No. P-19, Sub 381, is hereby approved subject to the terms and conditions established by the FCC in its Bell Atlantic/GTE Merger Order.

IT IS FURTHER ORDERED, That jurisdiction in this cause is hereby retained for the issuance of any further order or orders as may appear to be just and reasonable in the premises.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 27th day of May, 2001.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary

Legal Topics:

For related research and practice materials, see the following legal topics:

Administrative LawJudicial ReviewRemands & RemittitursComputer & Internet LawInternet BusinessInternet & Online ServicesU.S. Federal Communications Commission RegulationsEnergy & Utilities LawAdministrative ProceedingsPublic Utility CommissionsGeneral Overview

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

**PETITION FOR APPROVAL OF NPCR, INC.
D/B/A NEXTEL PARTNERS' ADOPTION OF
THE INTERCONNECTION AGREEMENT
BETWEEN SPRINT COMMUNICATIONS
COMPANY L.P., SPRINT SPECTRUM L.P.
D/B/A SPRINT PCS AND BELL SOUTH
TELECOMMUNICATIONS, INC. D/B/A AT&T
SOUTH CAROLINA D/B/A AT&T SOUTHEAST**

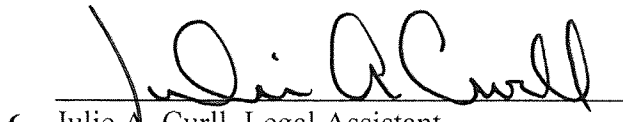
Docket No. 2007-256-C

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 20, 2007, she served a copy of the attached **NPCR Inc.'s Response to AT&T South Carolina's Motion to Dismiss** by first-class mail, proper postage affixed addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es):

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SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS
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